

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT GRIFFITH COLLABORATIVE
SOLUTIONS, LLC,

Plaintiff,

v.

FALCK NORTHERN CALIFORNIA
CORP., et al.,

Defendants.

FALCK USA, INC., et al.,

Plaintiffs,

v.

SCOTT GRIFFITH COLLABORATIVE
SOLUTIONS, LLC,

Defendant.

Case No. 19-cv-06104-SBA (JCS)
19-cv-08171-SBA (JCS)

**ORDER TO SHOW CAUSE WHY
DOCUMENTS SHOULD NOT BE
PRODUCED**

The undersigned previously issued a report and recommendation regarding sanctions for spoliation of evidence, which Judge Armstrong adopted except as to certain deadlines. Pursuant to that report and the order adopting it, Scott Griffith Collaborative Solutions, LLC (“SGCS”) has lodged certain documents that it withheld based on work product protection for in camera review to determine whether SGCS’s spoliation of other evidence created substantial need for production of these documents notwithstanding their status as work product in anticipation of litigation.

The work product doctrine, codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure, protects from discovery “documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” *See In re Grand Jury Subpoena*, 357 F.3d 900, 906 (9th Cir. 2004). “Proper preparation of a client’s case demands

1 that [an attorney] assemble information, sift what he considers to be the relevant from the
2 irrelevant facts, prepare his legal theories and plan his strategy without undue and needless
3 interference.” *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). This doctrine is distinct from the
4 attorney-client privilege, and is in fact “not a privilege but a qualified immunity protecting [certain
5 material] from discovery.” *See Admiral Ins. Co. v. U.S. Dist. Court*, 881 F.2d 1486, 1494 (9th Cir.
6 1989). Work product material that concerns factual matters, as opposed to an attorney’s opinions
7 or legal theories, may be discovered if the party seeking it demonstrates a “substantial need” for
8 the material and there is no other means for obtaining that information without undue hardship.
9 Fed. R. Civ. P. 26(b)(3)(A).

10 SGCS failed to preserve the following categories of evidence: emails between SGCS
11 employee Paul LeSage and various employees of SGCS’s client AMR, text messages between
12 LeSage and AMR employee Rob Garrett, and an email LeSage sent to SGCS contractor Ann
13 Kovacs passing along a news article. None of the documents SGCS lodged for in camera review
14 relate to the missing email between LeSage and Kovacs, so this order focuses on communications
15 between SGCS and AMR. To the extent those communications could not be produced by other
16 participants—most notably, the text messages between LeSage and Garrett, although it is not clear
17 whether all emails that LeSage deleted were recovered from other sources—SGCS’s failure to
18 preserve those communications deprived its opponent Falck USA, Inc. (along with several related
19 entities; collectively, “Falck”) of discovery that would have helped Falck understand the
20 coordination between SGCS and AMR at the time AMR released to the press a purportedly
21 defamatory statement drafted by SGCS.

22 The Court therefore finds substantial need for production of work product documents that
23 shed light on that relationship—specifically, all documents in the collection at issue that factually
24 describe SGCS’s communications or coordination with AMR. Portions of those documents that
25 do not describe such communications may be redacted. The Court’s tentative conclusion is that
26 SGCS must produce documents as follows:

Bates Nos.	Produce	Redact
SGCS001975–76	Email from LeSage.	Quoted email from Michael Coffin, <i>except</i> produce the phrases: “Connection . . . responded”); “Waiting . . . discuss”; and “Right . . . use.”
SGCS001977	Quoted email from LeSage, <i>except</i> redact the sentence: “We . . . proposal.”	Email from Coffin.
SGCS001981–82	None.	Entire document.
SGCS001983–85	None	Entire document.
SGCS001988–90	None	Entire document.
SGCS002003	Entire document except as noted.	Email subject line, and the passage: “Most . . . steps?”
SGCS002004–06	Entire document.	None.
SGCS002007	None. (Relevant portions are captured by SGCS002003. ¹)	Entire document.
SGCS002017–18	None. (Relevant portions are captured by SGCS001975–76.)	None.
SGCS002019–21	5:00 PM email from Coffin, <i>except</i> redact the passages: “I . . . happen.”; “The higher . . . Falck.”; “If . . . slap.” Quoted email from LeSage.	Quoted email from Coffin, except as noted above with respect to SGCS001975–76.

¹ As noted above, the production contemplated by this order is based solely on the substantial need for factual descriptions of communications between SGCS and AMR. The Court finds no need for production of duplicative material gathered from different custodians or included in multiple otherwise-protected email chains.

Bates Nos.	Produce	Redact
SGCS002023	None.	Entire document.
SGCS002024–26	None.	Entire document.
SGCS002027–29	None.	Entire document.
SGCS002030–34	None.	Entire document.
SGCS002035	None.	Entire document.
SGCS002051	None.	Entire document.
SGCS002055	None.	Entire document.
SGCS002056–57	None.	Entire document.
SGCS002058–61	None.	Entire document.
SGCS002067	<i>Only</i> email header information and the quoted email from LeSage. ²	Body of email from Coffin.
SGCS002068	Entire document except as noted.	Same material as SGCS002003.
SGCS002069–71	Entire document.	None.
SGCS002072	None. (Relevant portions are captured by SGCS002003.)	Entire document.
SGCS002073	Entire document except as noted.	Email header; quoted email from Coffin in its entirety; same material as SGCS002003 in the quoted email from LeSage.
SGCS002074–75	Header for quoted email from LeSage, and the sentence: “Rob . . . posted.”	Entire document except as noted.
SGCS002076	None. (Relevant portions are captured by SGCS001975–76.)	Entire document.


² If this quoted email has already been produced separately, SGCS may note that in lieu of producing this document.

Bates Nos.	Produce	Redact
SGCS002077–80	None. (Relevant portions are captured by SGCS002019–21.)	Entire document.
SGCS002083	None.	Entire document.
SGCS002084–85	None.	Entire document.
SGCS002087–89	None.	Entire document.
SGCS002090–92	None.	Entire document.
SGCS002102	None.	Entire document.
SGCS002103–04	None.	Entire document.
SGCS002105–09	None.	Entire document.
SGCS002144–45	None.	Entire document.
SGCS002148	None.	Entire document.
SGCS002149–50	None. (Relevant portions are captured by SGCS002073.)	Entire document.

Any party that believes the production contemplated above is inconsistent with the undersigned's previous report as adopted by Judge Armstrong, or with applicable law, is ORDERED TO SHOW CAUSE why the Court should not order production as stated above by filing a response no later than October 18, 2021. Any such response may not reargue matters previously decided.

IT IS SO ORDERED.

Dated: October 12, 2021


 JOSEPH C. SPERO
 Chief Magistrate Judge